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Supreme Court, U.S.
FILED

No. 09-307 SEP 8 - 2009

OFFICE OF THE CLERK

In The

Supreme Court of the United States

RAY C. BROWN AND
HELEN E. BROWN, HIS WIFE,

Petitioners,

v.

PHILIP A. FALCONE, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Delaware

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do the Delaware Court of Chancery traditions, policies and practices of refusing to award punitive damages violate Petitioners' United States Constitutional right to allege and prove bad faith corporate fraud and be awarded punitive damages in addition to compensatory damages, pursuant to the provisions of Article IV, Section 2, Article VI, and Amendment XIV, Section 1 of the United States Constitution?

2. Do the quoted portions of the transcript of the 10/9/08 teleconference by Delaware Chancery Court Vice Chancellor Leo E. Strine, Jr., together with the commentary provided by Petitioners throughout their Opening Brief in their Delaware Supreme Court case, No. 239, 2009, illustrate and verify that pro se Petitioners will not be able to receive impartial, honest, just and equitable rulings and decisions from Vice Chancellor Strine, or from any of the Delaware Chancery Court judiciary?

3. Is the sudden, surprise April 17, 2009 letter by Vice Chancellor Strine dismissing Petitioners' Chancery Court Civil Action void because: (1) the dismissal was entered contrary to the provisions of the controlling Delaware Chancery Court Rule 41(e), and (2) any request by Petitioners that Vice Chancellor Strine correct the erroneous dismissal would have been futile?

QUESTIONS PRESENTED – Continued

4. Was the service of process Petitioners used in their Delaware Chancery Court Civil Action No. 3943 proper because: (1) the provisions at § 9.9 of the two Merger Agreements between Respondents concerning service of process required such service and therefore replaced and/or superseded the Delaware rules and statutory service of process requirements, and (2) the main Respondents were served by U.S. Registered Mail as required by the two Merger Agreement provisions?

5. Does the June 17, 2009 Delaware Supreme Court Order likewise implicate the Delaware Supreme Court judiciary with the same improper partialities as is shown by the questions presented in paragraphs 1 to 4 above?

6. Can the two Respondent Harbinger entities and their principal manager Philip A. Falcone orchestrate bad faith corporate fraud through their subsidiaries and/or affiliates and associates in a merger transaction with Respondent Salton and its subsidiaries and/or affiliates, and then claim that Falcone cannot or should not be declared a de facto Salton manager with fiduciary duties to the "existing" Salton common stockholders because they were not directly or contractually on the merger instruments and agreements with Salton?

LIST OF PARTIES

Ray C. Brown And Helen E. Brown, His Wife, Petitioners.

Philip A. Falcone, Harbinger's Senior Partner, Managing Director and Portfolio Manager ("Falcone"), Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, and Their Involved Affiliates and Subsidiaries ("Harbinger"), Salton, Inc. and its Involved Affiliates and Subsidiaries ("Salton"), and The Following "Former" Salton Officers and Directors: Leonhard Dreimann, Lester C. Lee, William M. Lutz, David M. Maura, Jason B. Mudrick, Steven Oyer, William B. Rue, David C. Sabin, Daniel J. Stubler, and Bruce J. Walker, Respondents.

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(1) Delaware Supreme Court ORDER, Decided June 17, 2009 ..... App. 1

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OPINIONS BELOW

Petitioners are unaware of whether the lower court opinions are published. The Supreme Court of Delaware ORDER appears at App. 1. The Chancery Court of Delaware case dismissal order and Docket Entries with Petitioners' commentary appear at App. 6 to 11.

JURISDICTIONAL STATEMENT

The Delaware Supreme Court Order sought to be reviewed indicated that it was Decided on June 17, 2009.

The statutory provision that confers jurisdiction on the U.S. Supreme Court to review on a writ of certiorari the Order in question is 28 U.S.C. § 1257(a).

THE CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

ARTICLE IV

Section 2. "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

ARTICLE VI

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in

every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

" . . . the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . . ."

ARTICLE XIV

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges . . . of citizens of the United States; . . . ."

FEDERAL CIVIL JUDICIAL PROCEDURE and RULES, 2008 Revised Edition, pages 1156, 1157 and 1160.

STATEMENT OF THE CASE

1. Petitioners sued Respondents in the Delaware Chancery Court, seeking punitive and compensatory damages for bad faith corporate fraud.

2. Petitioners served Respondents by U.S. Registered Mail, as required by § 9.9 of the Respondents' two Merger Agreements.

3. After Respondents did not contact Petitioners or file any responsive pleadings, Petitioners filed their 9/2/08 Motion For An Order Sanctioning Plaintiffs' Service of their Complaint, Memoranda and Interrogatories. After again not receiving or hearing anything from anyone, Petitioners mailed their 9/22/08 letter to Vice Chancellor Strine requesting his "equitable Orders in response to our Motion."

4. Counsel for the main Defendants then communicated with VC Strine with his 9/26/08 letter, which was followed by VC Strine scheduling his 10/9/08 teleconference rather than officially ruling on Plaintiffs' Motion and letter request.

5. Vice Chancellor Strine stated at the start of his teleconference that he would not grant Plaintiffs' Motion. He then discussed many other aspects of the litigation.

6. Following an exchange of five letters, before and after receiving and further analyzing the transcript of the 10/9/08 teleconference, and after hearing from counsel on 1/9/09 as had been arranged by Petitioners' 11/3/08 letter to VC Strine, Petitioners finally realized they were not going to be able to receive impartial, honest, just and equitable rulings or decisions from Vice Chancellor Strine or from any of the Delaware Chancery Court judiciary.

7. Petitioners then started preparing their appeal to the Delaware Supreme Court.

8. As Petitioners were preparing to finalize and file their 4/27/09 appeal, they learned for the first time on 4/21/09 that VC Strine had dismissed their Chancery Court action on 4/17/09, as Petitioners described in their 4/27/09 Appellants' Appendix, at A2,3,3(1)&(2). Petitioners: (a) overlooked adding what had just happened as a last paragraph to their Appellants' Opening Brief, and (b) overlooked changing their TRIAL COURT'S JUDGMENT AND RATIONALE to also show what had just happened. (See pp.9&10 below and App. pp.6-11.)

FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

1. Petitioners believe the essential ones, with Petitioners' commentary intended to be factual, were set forth:

(1) In their APPELLANTS' OPENING BRIEF in the Delaware Supreme Court, as NATURE OF PROCEEDINGS, SUMMARY OF ARGUMENT, STATEMENT OF FACTS, TRIAL COURT'S JUDGMENT AND RATIONALE, paragraphs 1-3, 7-9, 11-17, 21, and their request for relief; and

(2) In their APPELLANTS' APPENDIX in the Delaware Supreme Court under DOCKET ENTRIES IN THE CHANCERY COURT. The pertinent part, at A2,3,3(1)&3(2), is as follows:

4/17/09 Letter by VC Strine to Counsel and Parties that Plaintiffs received April 23, 2009, two days after the date on which Plaintiffs requested and received from the Chancery Court Clerk's Office the Case History Search from which these Docket Entries have been prepared.

The Docket Entry indicates that VC Strine closed Plaintiffs' Civil Action, which must be improper in view of Chancery Court Rule 41(e), which provides:

> (e) Inaction for 1 year; Dismissal. Subject to the provisions of Rules 23, 23.1 and 23.2 in each cause pending wherein no action has been taken for a period of 1 year, the Court may upon application of any party, or on its own motion, and after reasonable notice, enter an order dismissing such cause unless good reason for the inaction is given, or the parties have stipulated with the approval of the Court as to such matter.

One year has not passed since Plaintiffs' Civil Action was filed or since the last action has been taken, nor have Plaintiffs received any reasonable notice about an intention to close their Civil Action. VC Strine's dismissal is yet another illustration and verification that he and the Chancery Court will do anything they want to do to effectively enforce the Court's defective, unjust and inequitable antiquated traditions and iniquitous "tight-ship" policies and practices of benefiting the State of Delaware, its judiciary and its "Royal Clientele," as discussed in paragraphs 17.G.&H. on pages 29 and 30 of Appellants' Opening

Brief. One copy of the pertinent two pages A3(1)&(2) received by each of the Plaintiffs follow this page.

The above FACTS . . . for paragraph 1(1) are reproduced starting in paragraph 3 – which is after the following paragraph 2 – with one sentence in paragraph 17G being changed to capitalized words. The facts concerning the prestigious and distinguished Delaware Chancery and Supreme Courts cannot be effectively described and presented by Petitioners in a summary-way. It is essential that these facts be presented in the words of the judiciary of the Courts involved and not just in Petitioners' words. The real facts are not just important they are everything, especially with what is going on with the Delaware Chancery and Supreme Court judiciary to facilitate and shield Delaware's "Royal Clientele" – the business entities with Delaware ties and their Delaware inner circle counsel.

2. The U.S. Constitutional question concerning punitive damages was raised and commented on:

(1) In the Delaware Chancery Court: (a) In Petitioners' request for punitive damages in paragraph 3(2) of the "demand" (for relief) in their 7/29/08 Complaint, as follows:

> 3. That, therefore, a Judgment for the following relief should be awarded to the Plaintiffs and against each Defendant:
>
> (2) For punitive damages in an amount that is at least nine times the compensatory damages.

and (b) In their 7/29/08 Plaintiffs' Memoranda, in paragraph 10, by setting forth the pertinent parts of the three U.S. Constitutional provisions that are set forth above under THE CONSTITUTIONAL PROVISIONS, and followed by Petitioners' factual commentary that:

> One of the privileges of U.S. citizens of probably every state is to be entitled to plead for and be awarded punitive damages in Civil Actions to punish deliberate fraud and to thereby attempt to deter it in the future.

(2) In the Delaware Supreme Court: (a) In Appellants' Opening Brief, in paragraph 10 by setting forth the pertinent parts of the three U.S. Constitutional provisions that are set forth above under THE CONSTITUTIONAL PROVISIONS, and also followed by the above quotation; (b) In paragraph (2) of their demand for relief that the Delaware Supreme Court:

> (2) Indicate an intention to have an official Chancery Court policy that honestly intends to punish those responsible for reprehensible and/or egregious bad faith fraud with punitive damages in addition to compensatory damages. And

(c) In paragraphs 11 through 17 and 21, which are set forth below.

(3) Neither Court officially ruled on the Constitutional question or provisions, but simply ignored the subject – except for VC Strine's statements that are

definitively expressed as shown in paragraph 15(2)A below.

3. The portions of Appellants' Opening Brief in the Delaware Supreme Court that were referred to in paragraph 1(1) of the above FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED are set forth from here:

NATURE OF PROCEEDINGS

The Wilmington, Delaware Chancery Court's Vice Chancellor Leo E. Strine, Jr.'s refusal to officially rule on Plaintiffs' 9/2/08 Motion For An Order Sanctioning Plaintiffs' Service Of Complaint, Memoranda and Interrogatories, and instead scheduling and conducting his 10/9/08 teleconference – as is referred to and commented on in the following Argument.

SUMMARY OF ARGUMENT

That Plaintiffs will be unable to receive honest, just and equitable treatment and rulings from Vice Chancellor Strine or from any of the judiciary members of the Delaware Chancery Court, because of the Chancery Court's defective, unjust and inequitable antiquated traditions and iniquitous "tightship" policies and practices, and should therefore have a present or retired member of the Delaware Supreme Court appointed as a Special Chancellor of the Delaware Chancery Court to honestly, justly and

equitably preside over Plaintiffs' Delaware Chancery Court Civil Action No. 3943.

STATEMENT OF FACTS

1. Vice Chancellor Strine has effectively illustrated – as extensively shown and commented on in the Argument starting on page 7 of this Brief – that Pro se Plaintiffs will be unable to receive honest, just and equitable treatment and rulings from him or from any of the judicial members of the Delaware Chancery Court.

2. Therefore, Plaintiffs should have a present or retired member of the Delaware Supreme Court be appointed as a Special Chancellor of the Delaware Chancery Court to honestly, justly and equitably preside over Plaintiffs' Delaware Chancery Court Civil Action No. 3943.

TRIAL COURT'S JUDGMENT AND RATIONALE

1. No official order or judgment was made or entered by the trial court.

2. Vice Chancellor Strine simply refused to officially rule on Plaintiffs' 9/2/08 Motion, and instead scheduled and conducted his 10/9/08 teleconference in which he stated, to the effect, that he would not grant Plaintiffs' Motion.

3. VC Strine's rationale for his position is set forth in paragraph 7 on page 13 below.

———♦———

1. Especially pertinent to Plaintiffs' appeal [to the Delaware Supreme Court] are the following, in date order:

8/5/08 letters to Paul Weiss & Sonnenschein law firms ("Ls#1") ---------- A5[1]

9/22/08 letter to Vice Chancellor Strine ("VC Strine") from Pls. ("L#2") ---------- A7

9/26/08 letter to VC Strine, from C.Wright, of Young Conaway ("L#3") ---------- A10

10/7/08 letter to VC Strine, from Young Conaway ("L#4") ---------- A12

10/9/08 teleconference of VC Strine, and its transcript ("TT") ---------- A24

10/11/08 letter to VC Strine, from Pls. ("L#5") ---------- A14

10/16/08 letter to Pls., from VC Strine ("L#6") ---------- A15

11/3/08 letter to VC Strine, from Pls. ("L#7") --- A17

11/5/08 letter to VC Strine, from Young Conaway ("L#8") ---------- A18

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[1] All references styled "A___" are documents in the record of the Delaware Supreme Court.

1/26/09 letter to Plaintiff Ray, from the State Bar of Arizona ("L#9") ----------A20

2/5/09 Arizona Republic article about Markopolos ("A#10") ----------A21

2/7/09 WSJ article by Carl C. Icahn about Capitalism ("A#11") ----------A22

3/30/09 WSJ article Re. Lyondell Chemical Co. decision ("A#12") ----------A23

2. A. After Ls#1 through L#5 and the teleconference, VC Strine stated in L#6:

> As the transcript of the conference makes clear, I read your complaint and motion carefully. [First paragraph, second sentence.]

However, after he received L#2 and L#3 he chose to schedule his teleconference rather than officially rule on Plaintiffs' 9/2/08 Motion For An Order Sanctioning Plaintiffs' Service of Complaint, Memoranda and Interrogatories ("Plaintiffs' 9/2/08 Motion"), as requested in L#2, even though paragraph 7 of Plaintiffs' 9/2/08 Motion stated:

> 7. Plaintiffs waive further briefing and argument on this Motion because of living about 2,400 miles from Wilmington, Delaware.

B. Paragraph 3 of Plaintiffs' Memoranda of 7/29/08 had already indicated the following:

> 3. Plaintiffs also anticipate leaving the bulk of the Delaware laws and case decisions with the Chancery Court Chancellor for this

> action – as the expert dealing with them on a regular basis. Ray has never been an expert on researching and expounding on laws and court decisions, and presently knows very little about Delaware law. Ray basically has always focused on knowing what is right and what is wrong, and has been able to go from there to simplify and resolve problems and differences. However, Ray is aware of and highly recommends the 2006 Delaware Journal of Corporate Law Article by Melvin A. Eisenberg, entitled " The Duty Of Good Faith In Corporate Law."

C. In Ray's legal practice, when his client was in the wrong, he recommended what needed to be done to correct the problem, and then helped achieve a proper solution. When his client was in the right, he recommended that the other party be required to correct the wrong for the benefit of his client. If the other party refused to do what was right, then he always assumed that an honest, perceptive judge would rule in accordance with the bona fide merits – not with the convoluted technicalities – of the dispute. Fortunately, this consistently occurred throughout his legal career.

3. A. VC Strine's careful-reading assertion in L#6 is shown to be erroneous in the first paragraph of L#6, as well as in many places throughout the teleconference transcript ("TT"), especially at 5/2 to 5/14, 11/3 to 11/13, 15/5 to 16/6, & 17/2 to 17/15 of the TT.

B. Plaintiffs' Memoranda of 7/29/08, filed with the Chancery Court along with their Complaint, is an integral part of Plaintiffs' Civil Action, yet apparently unread before the teleconference and L#6 – as VC Strine did not mention in L#6 that he read it.

7. After Plaintiffs – participating in their first-ever judicial teleconference – and counsel with Young Conaway, Paul Weiss and Sonnenschein introduced themselves, VC Strine started his 10/9/08 teleconference as follows:

> THE COURT: Well, we're here really to discuss a narrow issue, but I'm going to use it – we'll also talk a little bit longer term. The reality is, Mr. And Mrs. Brown, I cannot authorize service in the manner that you're suggesting. The merger agreement has an express no third-party beneficiary clause. Those – those kind of – the language is plain on its face, and one of the obvious purposes is to ensure that the constituent corporations to the merger and their boards and any parties to the merger agreement are the only ones that can specifically take advantage of its provisions. It doesn't mean that mergers don't have an effect on stockholders or that boards don't enter into mergers to advantage stockholders. But it does mean that stockholders cannot act directly under the merger agreement; and thus, you cannot use the service of process clause, and I'm not going to authorize service under it. [See pages 2 and 3/21 to 4/15 of the TT.]

The position of VC Strine is erroneous for at least the following two reasons:

(1) Because the main purpose for service of process is to ensure actual notice to the obviously involved Defendants of Plaintiffs' newly filed Civil Action, and in this case to do so in the manner required by Defendants in their two Merger Agreements that all Defendants in effect approved. Plaintiffs complied with the requirements and paid $960.00 to the Delaware Chancery Court in filing fees to do so. The filing of Plaintiffs' 8/25/08 Certificate of Service of Complaint, Memoranda and Interrogatories ("Plaintiffs' 8/25/08 Certificate of Service") shows their service by U.S. Registered Mail; and

(2) Because the main Defendants – Falcone, Harbinger and Salton – cannot be allowed to use their main ownership entities to engineer and orchestrate bad faith corporate fraud through their affiliate and subsidiary entities and associates, and then claim to be exempt from being sued by "existing" Salton common stockholders based on an exclusionary provision inserted in their two Merger Agreements. Allowing such a position or claim would be: (a) unjust and preposterous, and (b) a grim example of the Delaware Chancery Court arbitrarily doing whatever it wants to do to enforce its defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices that facilitate and shield even the reprehensible and/or egregious bad faith corporate fraud of these main – and the other – Defendants.

8. VC Strine also stated, concerning Plaintiffs' 9/2/08 Motion:

> You must contact opposing counsel about a briefing schedule for any such motions before contacting the court. [L#6, third to last sentence.]

This occurred even though paragraph 7 of Plaintiffs' 9/2/08 Motion waived further briefing and argument on their Motion, and Wilmington, Delaware counsel for the main Defendants processed L#3 before Plaintiffs knew he was involved. Counsel's L#3 inferentially shows that he had Ls#1, but ignored the courtesy of contacting Plaintiffs in response to their request in Ls#1 that counsel do so, which also was contrary to the implied requirements and/or spirit of Chancery Court Rules 1 and 8(f) and the professional courtesies owed by counsel even to pro ses. Plaintiffs now assume that he deliberately failed to do so because he knew what VC Strine would be doing to enforce the Court's defective, unjust and inequitable antiquated traditions and "tight ship" policies and practices.

9. VC Strine also stated, at 4/16 to 21 of the TT:

> If you wish to serve the defendants, you're going to have to use one of the statutes, other statutes. . . . I suggest you look at 10 Delaware Code Section 3114 or 10 Delaware Code Section 3104 and look at the requirements.

(1) These Sections primarily would require that Plaintiffs repeat the busyness of the onerous, time consuming and expensive Service of process by U.S. Registered Mail to the main Defendants that Plaintiffs had already served by U.S. Registered Mail pursuant to the requirements of the Defendants in their two Merger Agreements that all Defendants in effect approved. The main Defendants definitely knew of Plaintiffs' Civil Action against them, as did their counsel, as shown by Ls#1, L#3, page 2 of the TT, and Plaintiffs' 8/25/08 Certificate of Service.

(2) Plaintiffs assumed and expected that Salton would notify its "former" Officers and Directors and would represent them and hold them harmless from the judgment hereinafter entered against them, as discussed in the following paragraph 4 of Plaintiffs' 9/2/08 Motion:

> 4. That the individual Defendants, as existing or former managers of the corporate Defendants, are likewise included in the requirements and the privileges agreed upon by the parties. Now that Harbinger owns 94.4% of Salton's Common Stock and controls its Board of Directors with employees or affiliates (as set forth in paragraph 26 of the complaint), and because the individual Salton Defendants passively accommodated and capitulated to Falcone's and Harbingers' takeover maneuvers and manipulations through-out the merger process, it is assumed by Plaintiffs that Falcone and Harbinger at least will have the decency to

> arrange to have Salton's counsel handle the defense of our action for them and to hold them harmless from the judgment hereinafter entered by the Chancery Court.

11. A. Because of its defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices of refusing to award any punitive damages to punish those responsible for reprehensible and/or egregious fraud and such bad faith corporate fraud, the Chancery Court has indicated its intention to wrongfully deprive Plaintiffs of their U.S. Constitutional Right to such damages, which converts the Delaware Chancery Court of justice and equity into a Court of injustice and inequity by facilitating and shielding the perpetrators of such fraud from being punished with punitive damages in addition to compensatory damages.

B. Concerning the Madoff $50 billion Ponzi scheme, the 2/5/09 AZ Republic newspaper article covering the testimony of whistle-blower Harry Markopolos at the 2/4/09 House Financial Services subcommittee hearing, reported that Markopolos said the SEC . . . "is busy protecting the big financial predators from investors." This perfectly describes what the Delaware Chancery Court does with its defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices of refusing to punish the perpetrators of bad faith corporate fraud with punitive damages in addition to compensatory damages. By refusing to punish with punitive damages, the Chancery Court facilitates, shields and

encourages the very kind of bad faith corporate fraud that Plaintiffs have been subjected to by these Defendants in their Merger negotiations, actions and agreements. [See A#10, par.9.]

C. Two days later, the 2/7/09 WSJ article by Carl C. Icahn, concerning capitalism, explains why the defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices exist and flourish in the Delaware Chancery Court. His article stated:

> The problem, as I have long maintained, is that boards and managements have been entrenched by years of state laws and court decisions that insulate them from shareholder accountability. . . .
>
> What we need are fewer government rules at the state level that protect managements. We need to return capitalism . . . to its roots, where owners call the shots to managements, not the other way around.
>
> Currently, corporate law is largely the province of state governments, not federal. As a result, most corporations migrate to, and incorporate in, states that offer the most protection for managements.
>
> Management-friendly states have a vested interest in attracting these companies because hosting them generates a substantial portion of state revenues. It's a symbiotic relationship: The state offers management protections and, in return,

> receives much-needed tax revenue. [See A#11, paragraphs 5 through 8.]

D. While these truths in Icahn's WSJ article explain why the defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices flourish in the Delaware Chancery Court, they are not legal justifications for the Court utilizing them to facilitate, shield, and thereby encourage, reprehensible and/or egregious fraud or such bad faith corporate fraud by refusing to punish the perpetrators of such fraud with punitive damages in addition to compensatory damages. The fact that such a prestigious Court as the Delaware Chancery Court actually functions in this manner is truly shocking and disgraceful. The traditions, policies and practices of the Court need to be addressed and corrected, and not simply by its judiciary intending to never see any such fraud or allow claims for such fraud to be litigated.

12. Paragraph 6 of Plaintiffs' Memoranda of 7/29/08 states:

> 6. Plaintiffs believe and therefore assert that refusing to allow pleadings and awards for punitive damages for the victims of egregious bad faith corporate fraud is not JUST and does not do SUBSTANTIAL JUSTICE, but instead causes the Chancery Court to be a facilitator to shield and protect flagrant, deliberate bad faith corporate fraud from punitive damages, and to thereby directly and indirectly encourage more and

greater outrageous breaches of the corporate fiduciary duties of good faith, care and loyalty.

13. Paragraph 11 of the Plaintiffs' Memoranda of 7/29/08 states:

> 11. Plaintiffs believe and therefore assert, that counsel for Falcone, Harbinger and Salton had to know that they were functioning to facilitate the unthinkable bad faith corporate fraud perpetrated by Falcone and Harbinger against the "existing" Salton common stockholders. In partial defense of such facilitating, their rationale for going along with the deliberate bad faith corporate fraud probably would be along the following line:
>
> > "Well, the Chancery Court functions to facilitate and to thereby directly and indirectly encourage bad faith corporate fraud by refusing to punish it by allowing and awarding punitive damages. So, if it's okay for the Chancery Court to function as a facilitator, then it certainly should be okay for us to do so. Plus, this is one of the reasons knowledgeable counsel have always recommended that their big corporate clients incorporate in Delaware, especially when they may be involved in future merger or acquisition transactions. This is also why they provide in their M & A agreements that any legal actions must be commenced in

> the Chancery or other Courts of Delaware."

14. Concerning the preceding paragraphs 12 and 13, the first four sentences of paragraph 12 of Plaintiffs' Memoranda of 7/29/08 are as follows:

> 12. Needless to say, these things ought not to be!!! Lamentably, the main facilitating culprit may be the Chancery Court's adherence to the archaic and antiquated laws and/or Chancery Court decisions that in effect tell the perpetrators and their facilitating counsel and associates that they can defraud at will because even when they are sued for it, the Chancery Court will only award the victims of the bad faith corporate fraud about what the perpetrators would have voluntarily agreed to pay them if they were not deliberately perpetrating their flagrant bad faith frauds. IF SOCIETY CANNOT RELY ON THE JUDICIARY TO DO WHAT IS JUST AND RIGHT, THEN ALL IS LOST – AS THE JUDICIARY IS THE LAST BULWARK OF PROTECTION FOR SOCIETY. This situation needs to be addressed and corrected by the Chancery Court, rather than allowed to continue to encourage more and greater avaricious bad faith frauds against the innocent victims of the flagrant breaches of the corporate fiduciary duties of good faith, care and loyalty. [Caps. Added.]

15. Plaintiffs have come to realize, by virtue of giving further consideration to the details of the

letters, articles and TT listed in paragraph 1 above, that VC Strine deliberately refused to officially rule on Plaintiffs' 9/2/08 Motion so he could schedule his teleconference to discreetly assure inner circle Wilmington, Delaware counsel for the main Defendants that the Chancery Court and he:

(1) INTENDED TO CONTINUE TO ENFORCE THE COURT'S ANTIQUATED TRADITIONS AND "TIGHT-SHIP" POLICIES.

A. Plaintiffs set forth paragraphs 20, 22, 23 and 25 of their Plaintiffs' Memoranda of 7/29/08:

> 20. Only the judiciary can ultimately protect and benefit common stockholders from intentional bad faith corporate fraud. As the Delaware Chancery Court effectively does so, it can be expected to expand its reach to address any deliberate fraud – as such is a form of criminal activity committed by the very few that seriously harms far too many people and the reputation of the vast majority of companies that are honest and treat others as they should be treated. Deliberate fraud must not be protected, shielded or allowed to flourish in the Chancery Court. Otherwise, that fraudulent few are encouraged to be constantly or frequently defrauding others. Fraud should not be excused or rubber-stamped as business as usual in corporate America or in the Chancery Court. Otherwise, the unscrupulous, manipulative Wall Street

predators and their facilitating counsel and associates understandably will believe they have absolutely nothing to lose by perpetrating their deliberate bad faith corporate frauds.

22. (Plaintiff) Ray inferred from conversations with Wilmington, Delaware counsel that the Chancery Court runs a "tight-ship" and that the inner circle counsel and their law firms are afraid to step out of line with the "tight-ship" policies of the Chancery Court for fear of then being excluded or ostracized from the inner circle of those dealing with the Chancery Court. Therefore, Ray was not able to arrange for Wilmington counsel to represent him and his wife on a contingent fee basis, and was thus forced to personally pursue his vision of what was right.

23. A "tight-ship" policy is not per se wrongful, provided one of the reasons for the "tight-ship" policy is to punish and thereby attempt to stamp out and eradicate deliberate corporate fraud from being protected, shielded or allowed to thrive in the Chancery Court. When word gets out that deliberate fraud in corporate America will not be protected, shielded or condoned in the Delaware Chancery Court, the fraud either: (1) will not occur because prestigious counsel will no longer allow themselves to facilitate it, or (2) will be severely hampered because prestigious counsel will withdraw as counsel for those who seek to deliberately defraud

others or who refuse to treat others as they should be treated.

25. Counsel should never be allowed to function with impunity to facilitate the perpetration of deliberate fraud, especially flagrant bad faith corporate fraud. The more prestigious the counsel and their firms, the more vigilant they should be in making sure their corporate clients treat others as they should be treated. Otherwise, the tendency is for counsel to enjoy thinking more about the enhanced income to be received from eagerly facilitating such fraud than making sure their corporate clients intend to treat others as they should be treated or as they themselves would want and expect to be treated.

B. The Wilmington, Delaware counsel who honestly warned Plaintiff Ray of the Chancery Court's "tight-ship" policies, as set forth in paragraph 22 above, realistically would be unable to express and illustrate what is set forth throughout this Brief, because of their understandable concern for what would then happen to their careers, families and employers. Thus, out-of-state litigants like Plaintiffs would be the only logical ones that could possibly expose the truths set forth in this Brief.

(2) INTENDED TO NOT PUNISH OR AWARD ANY PUNITIVE DAMAGES.

A. The TT sets forth the following between VC Strine and Pl. Ray, at 14/4 to 15/3:

> THE COURT: Well, punitive damages, Chancery does not award punitive damages.
>
> MR. BROWN: But – but why is that?
>
> THE COURT: Why is that? I mean, that's – you'll have to ask the people who – who decided that in the 1960s and 1970s. But they're – in equity, punitive, we don't punish in equity.
>
> MR. BROWN: Yeah, but then how are you ever going to stamp out and eradicate deliberate bad faith –
>
> THE COURT: Mr. Brown, I'm not here to have a conversation with you about, you know –
>
> MR. BROWN: Sure.
>
> THE COURT: – the extent to which there's a variety of things that are employed to deter wrongdoing. And this Court has – has socked defendants with very large damage awards and we will often fee shift; but punitive damages, no, we don't do punishment in Chancery.
>
> And so to the extent you're proceeding on the idea at the end of this, if you win, you'll get eight – eight to nine times what your actual damages are, this is not one of the states

> that does that, and certainly its court of equity does not.

B. This exchange illustrates and verifies the truthfulness of the warnings shared with Plaintiff Ray by Wilmington, Delaware counsel about the Chancery Court's "tight-ship" policies, as set forth in paragraph 15(1) above, in the quoted paragraph 22.

C. It is obvious that VC Strine treats the Court's antiquated traditions and "tight-ship" policies as business as usual in the Chancery Court, without giving any thought whatever as to whether they are just, equitable and right. They are treated as advantageous expediencies that are aggressively enforced by whatever methods are necessary, with VC Strine enjoying his role as one of the Court's chief enforcers.

D. The fact that Wilmington, Delaware counsel and their law firms are forced to kowtow to the Court's defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices appear to be of no concern to the Chancery Court's judiciary. They appear to be routines that require that all counsel get and stay in line with the Court's defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices or be subjected to the unjust, inequitable and iniquitous consequences that will follow.

(3) INTENDED TO NOT SEE ANY FRAUD.

The TT sets forth the following with VC Strine and Plaintiff Ray, at 16/1 to 16/18:

> THE COURT: I mean, I get the point that at the end of it you went – the common stockholders went down from, in your view, to two percent of a combined entity. There's no clear indication of what the entities are, what their values are, what their cash flows are, why this was unfair. Honestly speaking, there have been a gazillion deals where common stockholders have been diluted and it's not unfair at all, because the reality is, the corporation is not doing well and other investors have come in and taken later risks and for which they're rewarded with large equity stakes. That happens.
>
> MR. BROWN: And, again, I thank you very much for your candidness and your – your bringing this to a head, because we are – we are naturally, in effect, like – like ordinary pro ses. Even though I'm a retired attorney, I just dealt in routine simple things for people throughout my career.

(4) INTENDED TO NOT SEE ANY MERIT IN PLAINTIFFS' (CLAIMS, ALLEGATIONS AND CONTENTIONS.

The TT sets forth the following two exchanges by VC Strine: (A) at 20/20 to 21/12, and (B) at 23/15 to 24/24:

(A) THE COURT: . . . . I guess what I'd say, Mr. Wright, Mr. Rieman, you might want to look at Mr. Brown's stock holding history. If he choose to go forth, there's going to be some transactional costs dealing with this litigation.

MR. RIEMAN: Yes, Your Honor.

THE COURT: And sometimes there's the ability to work these things out. I'm not talking about – Mr. Brown, I'm not talking about things here where you end up with all your money back.

MR. BROWN: Right. I realized that you're – you're suggesting that these – these other counsel be a little humane and offer a settlement.

THE COURT: Well, and they may, for this very reason, which is if you do actually go and serve folks and they have to file dismissal briefs and things like that, there's a certain amount of cost. And

(B) THE COURT: . . . But what I'm saying I guess to . . . , Mr. Wright, could you follow up with Mr. Brown?

MR. WRIGHT: We will do so, Your Honor.

THE COURT: And, Mr. Brown, again, I'm not talking about sugarplums.

MR. BROWN: Sure.

THE COURT: But you sound like a very practical man, and I appreciate that, and I appreciate the dilemma your family is in. And it may be that – you know, I guess what I'm saying to the defendants is, maybe you think about what it would take to brief up a motion to dismiss and deal with this and stuff, and maybe there can be some sort of reasonable thing that gives Mr. Brown a dollop of crème fraiche on top of the 33 cents. I don't think you have – I'm not sure you'd have an all-holders rule problem, given that we're settling existing litigation. So –

MR. BROWN: And I appreciate your recommendation there, and . . .

THE COURT: Because, I mean – and – so thank – why don't I – can – can two – Mr. Brown, could somebody just report back where – I mean, Mr. Wright, where we are and, Mr. Brown, in maybe a month from now?

MR. WRIGHT: We will, Your Honor.

THE COURT: Say November 1st.

MR. WRIGHT: We will do so, Your Honor.

THE COURT: Okay. Thank you all.

MR. WRIGHT: Thank you, Your Honor.

MS. BENNETT: Thank you, Your Honor.

THE COURT: Take care.

(5) INTENDED THAT PLAINTIFFS WOULD NOT EVEN BE PERMITTED TO ACTUALLY HAVE A TRIAL IN THE CHANCERY COURT.

The two exchanges set forth in paragraph 15(4) above vividly disclose that VC Strine would grant any motion for dismissal that inner circle counsel for the main Defendants decided to process if counsel did not desire or intend to enter into any settlement agreement with Plaintiffs – and to do so regardless of how the actual facts, merits, law and rules should honestly be seen and interpreted.

(6) INTENDED THAT PLAINTIFFS WOULD NOT BE THE BENEFICIARIES OF THE MARVELOUS PRINCIPLES OF CHANCERY COURT RULES 1 and 8(f).

A. These Rules are set forth in paragraph 5 of Plaintiffs' Memoranda of 7/29/08, as follows:

> 5. RULE 1. SCOPE AND PURPOSE OF RULES
>
> > These (Chancery Court) Rules . . . shall be construed and administered to secure the just, speedy and inexpensive determination of every proceeding.

RULE 8. GENERAL RULES OF PLEADING

> (f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

B. Surely these Rules are intended to mean something of actual significance, rather than simply be pretenses or shams that are used to arbitrarily assist with enforcing the Delaware Chancery Court's defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices.

[Please also see the entire TT, Plaintiffs' Complaint, Plaintiffs' Memoranda of 7/29/08, Plaintiffs' 8/25/08 Certificate of Service, Plaintiffs' 9/2/08 Motion, and Plaintiffs' Good Faith Memoranda, dated 9/15/08.]

16. Plaintiffs also have come to realize, in addition to the preceding paragraph 15, that VC Strine deliberately refused to officially rule on Plaintiffs' 9/2/08 Motion and instead schedule his teleconference for these two additional reasons:

(1) To permit him to tactfully browbeat Plaintiffs into capitulating to the many positions he covered in his teleconference that were intended to assist him with his mission of discouraging and suppressing Plaintiffs from continuing their efforts to convert the Chancery Court from its defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices. And

(2) To permit him to avoid providing a Chancery Court Order that Plaintiffs might use as the basis for

an appeal, on what Plaintiffs assume was his assumption that the Delaware Supreme Court would be impotent and powerless to grant Plaintiffs an appeal without an official Chancery Court Order having been made and entered.

17. A. Throughout his legal career, Pl. Ray has always wondered why Delaware was the corporate capital of the U.S. He was never able to learn of the true explanations until becoming subjected to the reprehensible and/or egregious bad faith corporate fraud of the Defendants, the Chancery Court's defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices and A#10 and A#11.

B. Every business and government organization and operation must be effectively self-policing or be vulnerable to defective, unjust and inequitable policies and practices. In the Chancery Court, frauds perpetrated against investors appear to be so actively facilitated, shielded and thereby encouraged by the Court's defective, unjust and inequitable antiquated traditions and "tight-ship" policies that the policies have become standard practices that are treated as expediencies to be aggressively enforced by whatever methods are necessary, as shown throughout this Brief and especially in paragraphs 15 and 16.

C. The temptation to embrace such traditions, policies and practices that are defective, unjust and inequitable can too easily overcome principles that are truly effective, just and equitable, which then

result in iniquities that when facilitated and shielded can become rampant in any business or government organization or operation, as appears to have occurred in the Delaware Chancery Court.

D. The simple, effective, just and equitable solution for the Chancery Court is an official policy that honestly intends to punish the perpetrators of reprehensible and/or egregious bad faith fraud with punitive damages in addition to compensatory damages. Then, temptations to perpetrate frauds will be far less likely to overcome would be fraudsters and their counsel and associates for fear of public exposure and the just and equitable punishment of punitive damages in addition to compensatory damages. Any fraudsters that did materialize probably would try to quickly settle their frauds. Whereas now, fraudsters and their inner circle counsel and associates are thrilled to rely on the Chancery Court's well-established reputation for effectively enforcing its defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices rather than be bothered with having to personally deal with the consequences for their bad faith corporate frauds.

E. Presently, fraudsters and their knowledgeable counsel can plan their frauds knowing they will be judicially facilitated and shielded throughout by defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices by simply requiring that Actions be filed in the Chancery or other Courts of Delaware. The Court receives its

filing fee, $960.00 in this Civil Action, and then sets about to dispose of those not represented by inner circle counsel by arbitrarily and aggressively enforcing its defective, unjust and inequitable antiquated traditions and "tight-ship" policies and practices.

F. There must be an honest, official policy that is intended to eradicate and exterminate fraud, or egregious fraud continues to spread as do weeds. If such a policy is not officially created and honestly implemented, injustice, inequity and even iniquity can infest a judicial system, as appears to have occurred with the Chancery Court. Such injustice, inequity and iniquity also can become pandemic like Mexico's drug problems and America's immigration, stock market and housing problems.

G. The Delaware Chancery Court's traditions of not punishing or awarding punitive damages undoubtedly started innocently enough. But the traditions have grown into diabolical monsters because of fraudsters and their shrewd counsel deliberately taking advantage of the Court's little known but firmly-established reputation for effectively enforcing its "tight-ship" policies and practices of facilitating, shielding, and thereby encouraging, the fraudulent activities perpetrated and assisted by its "Royal Clientele" – the business entities with Delaware ties and their Delaware inner circle counsel – as described and illustrated throughout this Brief, and especially in paragraphs 15 and 16 above. AS A CONSEQUENCE OF THIS SITUATION, THE

CHANCERY COURT AND ITS JUDICIARY HAVE DELIBERATELY ABDICATED THEIR PRIMARY JUDICIAL RESPONSIBILITY OF IMPARTIALLY ADMINISTERING HONEST, JUST AND EQUITABLE RULINGS AND DECISIONS FOR ALL LITIGANTS (Caps. Added). Legitimate questions are:

(1) How long has this iniquity been going on in the Delaware Chancery Court?

(2) How many other litigants have been successfully subjected to the same or similar treatment as is being bestowed upon Plaintiffs?

(3) Are these iniquitous judicial policies and practices confined to the Delaware Chancery Court or are they statewide in Delaware?

H. (1) What should be concluded from VC Strine's 10/9/08 teleconference? The standard fix is on! Not that any bribery is involved. It is the fact that litigant victims of bad faith fraud that are not represented by Delaware inner circle counsel are treated to a second fraud perpetrated upon them by the Chancery Court – to iniquitously benefit the State of Delaware, its judiciary and its "Royal Clientele."

(2) The rationale for continuing these traditions and the iniquitous "tight-ship" policies and practices of the Delaware Chancery Court realistically can be said to be:

> Bad faith fraud victims that are not represented by inner circle Delaware counsel are expendable. Why be concerned or be

> bothered with them? Our only concern should be for the State of Delaware, its judiciary and its "Royal Clientele."

(3) All as illustrated and verified by VC Strive in his 10/9/08 teleconference, and as quoted and commented on throughout this Brief, especially in paragraphs 15 & 16.

I. Every particular area of corruption, fraud or criminal activity has its appropriate remedy. For the Chancery Court, the simple, effective, just and equitable remedy is the imposition of punitive damages in addition to compensatory damages: (1) to punish those responsible for reprehensible and/or egregious bad faith fraud, and (2) to deter such fraud in the future. Anything short of that is simply a pretense or sham that results in a continuation of the facilitating, shielding and encouragement of ever more such fraud – which likewise will end up with the real villains being treated as royalty while their victims, like Plaintiffs, are treated as if they were the villains.

J. Bernard Madoff's guilty plea is a belated but appropriate effort to at least minutely amend for his atrocious Ponzi fraud, presumably having been encouraged to do so by an honest, principled attorney. Now the best example-setting gesture the two of them could agree to would be for Madoff to exercise additional backbone-qualities and offer to be executed for having perpetrated his outrageous fraud. Such an offer by Madoff probably would serve to encourage

leadership everywhere to use their best backbone-qualities to create and implement honest policies and practices that are effective, just and equitable rather than stubbornly remain addicted to traditions, policies and practices that are defective, unjust, inequitable and iniquitous.

K. Plaintiffs are not seeking to embarrass the Delaware Chancery Court for the iniquitous features utilized in its corporate judicial operations, but are simply asking that bona fide corrections be made that include: (1) an official Chancery Court policy that honestly intends to punish those responsible for reprehensible and/or egregious bad faith fraud with punitive damages in addition to compensatory damages, and (2) for plaintiffs to have a present or retired Delaware Supreme Court Justice honestly, justly and equitably preside over their Chancery Court Civil Action.

L. Plaintiffs in effect asked the Delaware Chancery Court to correct its antiquated traditions and "tight-ship" policies and practices, but the Court refused to do so – as Plaintiffs have herein pointed out. Now, Plaintiffs are asking the Delaware Supreme Court to provide the belated corrections.

21. A. Plaintiffs also have given further consideration to L#6, especially the following complete paragraph and short last sentence on page 2:

> In sum, if you choose not to retain an attorney, it is up to you both to handle this

> lawsuit in the manner required by this court's rules. Please do not burden the court with further letters of this kind. Confine yourself to filing proper motions with supporting papers in accordance with the court's rules. You must contact opposing counsel about a briefing schedule for any such motions before contacting the court. The court will not respond further to letters of this kind.
>
> IT IS SO ORDERED.

B. Plaintiffs likewise have come to realize that they should not again communicate with VC Strine because of: (1) their fear of being unable to receive honest, just and equitable treatment and rulings, and (2) their fear of being even further victimized by some bizarre Contempt Of Court charge, ruling or order that would be intended to assist him in consummating his mission and efforts to effectively and efficiently enforce the Chancery Court's defective, unjust and inequitable antiquated traditions and iniquitous "tight-ship" policies and practices.

THEREFORE, Plaintiffs "request" or "demand" that the Delaware Supreme Court appoint one of its present or retired members as a Special Chancellor of the Delaware Chancery Court to:

(1) Preside over Plaintiffs' Delaware Chancery Court Civil Action No. 3943.

(2) Indicate an intention to have an official Chancery Court policy that honestly intends to

punish those responsible for reprehensible and/or egregious bad faith fraud with punitive damages in addition to compensatory damages.

(3) Carefully read Plaintiffs' Chancery Court filings.

(4) Provide just, equitable Orders in response to Plaintiffs' 9/2/08 Motion as will honestly carry out: (a) what the applicable law should be, and (b) the principles of Chancery Court Rules 1 and 8(f). And

(5) Implement the requests made by Plaintiffs in paragraphs 7 and 14 of their Plaintiffs' Memoranda of 7/29/08, to permit the Special Chancellor – during the trial of Plaintiffs' Action – to hear the testimony of the individual Salton Defendants concerning what they say actually occurred during the Merger negotiations, actions and agreements.

(6) Vacate the 4/17/09 Order by VC Strine that dismissed Plaintiffs' Civil Action.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT OF CERTIORARI

1. It is imperative for America's judiciary that every level of the administration of justice be administered to provide impartial, honest, just and equitable rulings and decisions for ALL litigants, and that none be allowed to provide partiality to any type of "Royal Clientele" – in Delaware, the business entities with Delaware ties and their Delaware inner circle

counsel. Otherwise, the latter type of judicial administrations become courts of deliberate judicial fraud perpetrated against ALL litigants that are not part of the "Royal Clientele" of those particular judicial administrations – which has occurred in the Delaware Chancery and Supreme Courts.

2. The Delaware Supreme Court showed itself to be wrongly positioned in full agreement with the Delaware Chancery Court's:

> A. Defective, unjust and inequitable antiquated traditions of refusing to punish even serious wrongdoing by awarding punitive damages, and
>
> B. Its iniquitous judicial policies and practices of facilitating and shielding Delaware's "Royal Clientele,"
>
> by its June 17, 2009 Order in which it deliberately refused to honestly deal with:
>
> > (1) The real reason for Petitioners' appeal to the Delaware Supreme Court, which was their realization that they were not going to be able to receive impartial, honest, just and equitable rulings and decisions from Vice Chancellor Strine, or from any of the Chancery Court's judiciary, because of that Court's:
> >
> > > (a) Defective, unjust and inequitable antiquated traditions of not allowing any punitive damages as punishments, and

(b) Its iniquitous policies and practices of facilitating and shielding Delaware's "Royal Clientele" from any consequences for their bad faith corporate fraud; and

(2) The real reason the Chancery Court's April 17, 2009 order dismissing Petitioners' complaint was improper, and therefore void, that was clearly shown and commented on in Appellants' Appendix. (See pp.4 to 6 above and App. pp.6 to 11.)

3. It is also imperative that this Supreme Court, as the very last bulwark of protection for society, emphatically emphasize to the Delaware Courts and to America:

A. That ALL judicial administrations must steadfastly adhere to their primary judicial responsibility of impartially administering honest, just and equitable rulings and decisions for ALL litigants, and that they not have any traditions, policies or practices that provide preferential treatment for any type of "Royal Clientele"; and

B. That ALL State Bar Associations be actively and honestly involved in the monitoring and improvement of state judicial laws, rules, policies and practices.

4. It is likewise imperative that this Supreme Court provide its authoritative judicial pronouncements

concerning the right to allege, prove and receive punitive damages in addition to compensatory damages to punish reprehensible and/or egregious type wrongs, with the punitive damages being more than a one to one ratio for the actual wrongdoers – as the only practical way to effectively deter serious wrongs from proliferating in the future.

5. It is also imperative that this Supreme Court exercise its Rule 10 discretion to effectively deal with these compelling issues – even though the Court's indicated preference is to primarily decide the type of disputes discussed in its Rule 10. Not granting this petition will ensure a continuation of the pernicious policies and practices of the Delaware Chancery and Supreme Courts that facilitate, shield and enormously benefit Delaware, its judiciary and its "Royal Clientele" to the fraudulent detriment for ALL Delaware Chancery Court litigants, like Petitioners, who are not part of Delaware's "Royal Clientele."

6. It is also imperative that this Supreme Court do whatever is necessary to rein in the Delaware Chancery and Supreme Courts' judiciary to prevent them from bestowing their secondary frauds upon Petitioners, and others like them, that are litigating bad faith fraud claims in the Chancery Court. Please recall what tragically continued and escalated even though officials were warned about Bernard Madoff. Americans assume that all judicial administrations are guardians of the integrity of the judicial processes rather than administrations that have quiet agendas that intend to do whatever they want to do to benefit

their own "Royal Clientele." If this Supreme Court refuses to protect society from being victims of such secondary judicial frauds, America will be doomed to an ever-expanding form of organized criminal-like judicial fraud that facilitates, shields and benefits its own particular "Royal Clientele" in whatever they want to do to others.

7. It is likewise imperative that the U.S. Supreme Court, as the final bulwark of protection for America, add statesmanship leadership to its customary decision making responsibilities, by:

> A. Making appropriate pronouncements, as discussed in ¶s 3,4&9, and
>
> B. Indicating and ordering the effective steps that are necessary to successfully carry the pronouncements into fruition. No other person or organization can or will do so. It is up to you members of this United States Supreme Court who have been specially nominated, confirmed and sworn to provide leadership, benefits and protections for the enduring sake of America's legal profession, its judiciary, and its citizens.

8. Someone has to do it, and there isn't anyone if not you as the most important legal body in America. You simply cannot allow other courts to dish out skewed, distorted or dishonest rulings and decisions with impunity, regardless of how prestigious the courts may appear to be. True, honest justice must be the constant goal. It cannot be taken lightly. It is too important and crucial for America. Your

responsibilities also include effectively seeking to elevate the reputation and respect for the honesty and integrity of the legal profession and its judiciary, and to not allow the two to be perverted by the dishonest and fraudulent few that are doing so.

9. This is part of your responsibility as members of the most important body of attorneys in America. It is imperative that you set the right example, and that you admonish and inspire State Bar Associations and State Supreme Court judges and justices to do likewise for the ultimate benefits that will flow to their states and their citizens. You must also effectively remind Americans that the truly HONEST attorneys are the ones that should be elevated by election or appointment to be their judges and justices.

10. Too many people and groups insist that you "stay in your place," and thereby seek to minimize your effectiveness. However, your true place also involves providing real leadership for the legal profession, its judiciary and the citizens of America. You must not shirk those leadership responsibilities by just deciding the preferred cases, as if other judicial administrations were independent kingdoms or dictatorships entitled to operate using whatever iniquitous traditions, policies and practices that please them.

CONCLUSION

Wherefore, our Petition for Writ of Certiorari should be granted.

Respectfully submitted,

RAY C. BROWN, Pro Se
HELEN E. BROWN, Pro Se
50 Willow Court
Sedona, AZ 86351
928-284-1566

IN THE SUPREME COURT
OF THE STATE OF DELAWARE

RAY C. BROWN and HELEN E. BROWN, his wife, Plaintiffs Below-Appellants, v. PHILIP A. FALCONE, HARBINGER CAPITAL PARTNERS MASTER FUND I, LTD., HARBINGER CAPITAL PARTNERS SPECIAL SITUATIONS FUND, SALTON, INC., LEONHARD DREIMANN, LESTER C. LEE, WILLIAM M. LUTZ, DAVID M. MAURA, JASON B. MUDRICK, STEVEN OYER, WILLIAM B. RUE, DAVID C. SABIN, DANIEL J. STUBLER, and BRUCE J. WALKER, Defendants Below-Appellees.	§No. 239, 2009 § §Court Below-Court §of Chancery of the §State of Delaware § §C.A. No. 3943 § § § § § § § § § § § § § § § § § § §

Submitted: May 8, 2009
Decided: June 17, 2009

Before **BERGER**, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 17th day of June 2009, upon consideration of the appellants' opening brief and the appellees' motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiffs-appellants, Ray C. Brown and Helen E. Brown (the "Browns"), filed an appeal from the Court of Chancery's April 17, 2009 order dismissing their complaint, without prejudice, for failure to properly effect service of process on the defendants-appellees, Philip A. Falcone, Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, Salton, Inc., Leonhard Dreimann, Lester C. Lee, William M. Lutz, David M. Maura, Jason B. Mudrick, Steven Oyer, William B. Rue, David C. Sabin, Daniel J. Stubler, and Bruce J. Walker ("Harbinger"). Harbinger has moved to affirm the judgment of the Court of Chancery on the ground that it is manifest on the face of the opening brief that the appeal is without merit.[1] We agree and affirm.

(2) The record reflects that the Browns filed a complaint in the Court of Chancery on August 5, 2008. The complaint alleged breach of fiduciary duty claims against Harbinger in connection with a merger by and among Salton, Inc., SFP Merger Sub, Inc. and APN Holding Company, as evidenced by an

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[1] Sup. Ct. R. 25(a).

Agreement and Plan of Merger dated as of October 1, 2007 (the "Merger Agreement").

(3) On September 2, 2008, the Browns filed a document in the Court of Chancery certifying that, on August 6, 2008, they had caused a copy of their complaint to be sent to Harbinger and its counsel by registered mail. On September 8, 2008, the Browns filed a motion in the Court of Chancery requesting that the Court of Chancery enter an order confirming that service of their complaint upon Harbinger by registered mail was proper pursuant to the consent-to-service provision set forth in Section 9.9 of the Merger Agreement.

(4) On October 9, 2008, the Vice Chancellor held a teleconference with the parties during which he denied the Browns' motion. He explained to the Browns that the Merger Agreement had an express "no third party beneficiary" clause whose purpose was to ensure that the parties to the merger and their boards would be the only beneficiaries of the Merger Agreement's provisions and, therefore, stockholders such as the Browns could not take advantage of its provisions. The Vice Chancellor further explained that, if the Browns wished to pursue their claims against Harbinger, they would have to utilize the applicable procedure under Delaware law governing service of process.

(5) The record reflects that, in spite of the Vice Chancellor's specific instruction to the Browns, they failed to effect service of process upon Harbinger in

accordance with the requirements of Delaware law. Accordingly, the Court of Chancery dismissed their complaint, without prejudice, on April 17, 2009.

(6) In this appeal, the Browns claim that the Court of Chancery's decision was improper and unjust, and request that a Justice of the Delaware Supreme Court be appointed to preside over their claims against Harbinger.

(7) The record reflects that Section 9.5 of the Merger Agreement provides, in relevant part, that "nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement." Under Delaware law, persons who are neither parties nor intended third party beneficiaries of a contract may not sue to enforce the contract's terms.[2] In the absence of any evidence that the Browns are either parties or intended third party beneficiaries of the Merger Agreement, we conclude that their claim of error on the part of the Court of Chancery is without merit. Their request that a Justice of the Delaware Supreme Court be appointed to preside over their claims, apart from having no basis in Delaware law, is moot.

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[2] *Triple C Railcar Service, Inc. v. City of Wilmington*, 630 A.2d 629, 632-33 (Del. 1993).

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that Harbinger's motion to affirm is GRANTED. The judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

LEO E. STRINE, JR.
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
Wilmington, Delaware
19801-3734

April 17, 2009

Ray C. Brown
Helen E. Brown
50 Willow Court
Sedona, Arizona 86351

Christian D. Wright, Esquire
Young Conaway Stargatt & Taylor, LLP
1000 West Street, 17th Floor
Wilmington, DE 19801

RE: *Ray C. Brown and Helen E. Brown v. Philip A. Falcone, et al.* C. A. No. 3943-VCS

Dear Counsel and Parties:

This case is dismissed without prejudice as a result of the fact that service of process has never been properly effected. No further filings may be made in this case. If the plaintiffs wish to sue again, they shall file a new complaint and effect service of process in accordance with the law.

IT IS SO ORDERED.

Very truly yours,

/s/ *Leo E. Strine, Jr.*

Vice Chancellor

LESJr/cb

(2) DOCKET ENTRIES IN THE DELAWARE CHANCERY COURT

8/5/08 Plaintiffs' Pro Se Complaint, Plaintiffs' Memoranda and Interrogatories to Defendants, each Dated 7/29/08.

9/2/08 Plaintiffs' Certificate of Service by Registered Mail, Dated 8/25/08.

9/8/08 Motion For An Order Sanctioning Plaintiffs' Service of Complaint, Memoranda and Interrogatories, Dated 9/2/08.

9/18/08 Plaintiffs' Good Faith Memoranda, Dated 9/15/08.

9/25/08 Letter to VC Strine from Plaintiffs, Dated 9/22/08.

9/26/08 Letter to VC Strine from Christian D. Wright, Dated 9/26/08.

10/7/08 Letter to VC Strine from Christian D. Wright, Dated 10/7/08.

10/15/08 Letter to VC Strine from Plaintiffs, Dated 10/11/08.

10/16/08 Letter to VC Strine from Christian D. Wright, Dated 10/16/08.

10/16/08 Letter from VC Strine to Plaintiffs, Dated 10/16/08.

11/6/08 Letter to VC Strine from Christian D. Wright, Dated 11/5/08.

11/7/08 Letter to VC Strine from Plaintiffs, Dated 11/3/08.

11/18/08 Telephone Conference held on 10/9/08.

4/17/09 Letter by VC Strine to Counsel and Parties that Plaintiffs received April 23, 2009, two days after the date on which Plaintiffs requested and received from the Chancery Court Clerk's Office the Case History Search from which these Docket Entries have been prepared.

The Docket Entry indicates that VC Strine closed Plaintiffs' Civil Action, which must be improper in view of Chancery Court Rule 41(e), which provides:

> (e) Inaction for 1 year; Dismissal. Subject to the provisions of Rules 23, 23.1 and 23.2 in each cause pending wherein no action has been taken for a period of 1 year, the Court may upon application of any party, or on its own motion, and after reasonable notice, enter an order dismissing such cause unless good reason for the inaction is given, or the parties have stipulated with the approval of the Court as to such matter.

One year has not passed since Plaintiffs' Civil Action was filed or since the last action has been taken, nor have Plaintiffs received any reasonable notice about an intention to close their Civil Action. VC Strine's dismissal is yet another illustration and verification that he and the Chancery Court will do anything they want to do to effectively enforce the Court's defective, unjust and inequitable antiquated traditions and iniquitous "tight-ship" policies and practices of benefiting the State of Delaware, its judiciary and its

"Royal Clientele," as discussed in paragraphs 17. G. & H. on pages 29 and 30 of Appellants' Opening Brief. One copy of the pertinent two pages received by each of the Plaintiffs follow this page, as pages A3 (1) & (2).

Strine, Leo E
DE Court of Chancery Civil Action
34 The Circle
Georgetown, DE 19947

[Bar Code Omitted]

Brown, Ray C
30 Willow Court
Sedona, AZ 86351

To: Brown, Ray C
From: Strine, Leo E
Subject: Service of Documents in Brown, Ray C & Helen E vs Philip A Falcone et al

You are being served documents that have been electronically submitted in Brown, Ray C & Helen E vs Philip A Falcone et al through LexisNexis File & Serve. The details for this transaction are listed below.

Court:	DE Court of Chancery Civil Action
Case Name:	Brown, Ray C & Helen E vs Philip A Falcone et al
Case Number:	3943-VCS
Transaction ID:	24753754
Document Title(s):	
Letter to Counsel and Parties (1 page)	
Authorized Date/Time:	Apr 17 2009 3:48 PM EDT
Authorizer:	Leo E Strine
Authorizers Organization:	DE Court of Chancery Civil Action
Sending Parties:	
N/A	

Served Parties:
Brown, Ray C